

## **401 KAR 47:070. Operator certification.**

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-605

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to adopt rules and administrative regulations for the management, processing or disposal of wastes. KRS 224.40-605 requires the cabinet to promulgate administrative regulations that establish standards and a certification program for operators of waste sites or facilities. This chapter establishes the permitting standards for solid waste sites or facilities, the standards applicable to all solid waste sites or facilities, and the standards for certification of operators. An overview of the permit program is found in Section 1 of 401 KAR 47:080. This administrative regulation establishes the program for education, testing, and certification of facility operators of solid waste sites or facilities.

Section 1. Definitions. The following are definitions as used in this administrative regulation:

(1) "Category of solid waste site or facility" means inert, residual, construction demolition debris, residential or contained landfill and includes landfarming facilities receiving Class I, II and III sludges or wastes.

(2) "Certificate" means a written document issued by the cabinet stating that the operator has met all requirements for certification.

(3) "Certified operator" means a solid waste site or facility operator who holds a valid certificate. The following are categories of certified operators:

(a) "Landfarming operator" means a certified operator who is the individual responsible for ensuring compliance with all permit conditions at a landfarming facility in accordance with 401 KAR 48:200, and who is reasonably available to the site;

(b) "Landfill operator" means a certified operator who is the individual responsible for the daily operating requirements identified in 401 KAR 47:120, 48:060, 48:090, or 48:170;

(c) "Landfill manager" means a certified operator who is the individual with primary responsibility for management and operation of the residential or contained or construction/demolition debris sanitary landfill to assure compliance with all permit conditions including direct responsibility for providing guidance to the landfill operator, or the permittee and the authority to commit financial resources allocated for proper operation; or

(d) "Interim operator" means the individual identified by the permittee as the replacement landfarming operator, landfill operator, or landfill manager in accordance with Section 12 of this administrative regulation.

Section 2. Applicability. (1) The requirements in this administrative regulation apply to all solid waste sites or facilities except as subsection (2) of this section provides otherwise. Each solid waste site or facility shall have at least one (1) operator certified in accordance with Section 3 (sanitary landfills) or Section 4 (landfarming facilities) of this administrative regulation, as appropriate to the category of solid waste site or facility.

(2) Residual landfills and facilities operating under a registered permit-by-rule or a permit-by-rule are excluded from the requirements of this administrative regulation, unless the cabinet requires operator certification as a condition of the permit. In deciding whether to require operator certification at a residual landfill, a site or facility with a registered permit-by-rule or a permit-by-rule, the cabinet shall consider:

(a) The characteristics of the waste stream;

(b) The characteristics of the site, including geology and hydrology; and

(c) The experience and qualifications of the operator.

(3) It shall be the responsibility of the permittee to ensure that the solid waste site or facility com-

plies with the requirements of this administrative regulation.

Section 3. General Provisions for Landfills. (1) Each construction/demolition debris, residential and contained landfill shall have a certified operator who is a landfill operator and a landfill manager. The requirements of this subsection may be fulfilled by:

(a) One (1) individual who has been certified in accordance with Section 6 of this administrative regulation for both categories of certified operator (provided this individual meets the qualifications in Sections 1(3) and 11 of this administrative regulation); or

(b) Two (2) individuals who have been certified in accordance with Section 6 of this administrative regulation in each category of operator such that one (1) individual is certified as a landfill operator and one (1) individual is certified as a landfill manager.

(2) As provided in Section 2 of this administrative regulation, the cabinet may require as a permit condition that a residual landfill or a site or facility with a permit-by-rule or registered permit-by-rule shall have a certified operator who is a landfill operator or a landfill manager or both. The permit condition imposed shall reference all applicable operating administrative regulations and requirements for the specific category of sanitary landfill.

(3) In the event the certified operator who is the landfill operator is not physically at the facility during operating hours, either the landfill manager or an interim operator shall be designated responsible for daily site operation and shall be physically located on site. If an interim operator assumes responsibility for daily operation of the landfill, the requirements in Section 12 of this administrative regulation shall be met.

(4) In carrying out its responsibilities, the cabinet shall examine the qualifications of applicants for certification and maintain records of certification and a register of certified operators.

(5)(a) Except as provided in Section 2 of this administrative regulation, no landfill shall continue operation in the absence of a landfill operator on site for more than ten (10) consecutive operating days without appointment of a qualified interim operator in accordance with Section 12 of this administrative regulation or written approval from the cabinet.

(b) Except as provided in Section 2 of this administrative regulation, no landfill shall continue operation in the absence of a landfill manager for a period longer than thirty (30) consecutive operating days without appointment of a qualified interim operator in accordance with Section 12 of this administrative regulation or written approval from the cabinet.

Section 4. General Provisions for Landfarming Facilities. (1) Each landfarming facility shall have a landfarming operator certified in accordance with Section 6 of this administrative regulation.

(2) No landfarming facility shall continue operation in the absence of a landfarming operator for a period longer than five (5) consecutive working days without appointment of a qualified interim operator in accordance with Section 12 of this administrative regulation or written approval from the cabinet.

Section 5. Application for Certification. (1) An individual desiring to be certified shall file an application on a form provided by the cabinet at least thirty (30) days before beginning training for a scheduled examination.

(2) The applicant shall submit all information needed to determine eligibility of the applicant for examination and certification.

(3) The cabinet shall review applications and supporting documents, determine the eligibility of the applicant for examination and notify the applicant of the determination.

(4) No person shall be eligible for examination for certification unless that person completes the appropriate training class or classes provided by the cabinet, unless an alternative training program or certification program is accepted by the cabinet in accordance with Section 7(6) of this administra-

tive regulation.

Section 6. Training Classes and Examinations. (1) The cabinet will provide training classes for the certified operator.

(2) Training sessions will be held at least annually at places and times set by the cabinet. The last day of each training session will be set aside for the purpose of examinations to determine the knowledge and ability of the applicant.

(3) Certification shall be conditioned on successful passage of a written examination, unless an alternative examination process is accepted by the cabinet.

(4) Separate examinations will be prepared to cover basic differences in the duties and responsibilities for the operation of each category of solid waste site or facility and each category of certified operator.

(5) Applicants who fail to pass an examination may reapply for the examination at a regularly scheduled examination or by appointment with the cabinet. The cabinet shall require the applicant to attend the training session again if the applicant fails to pass the examination in three (3) attempts.

(6) In the event an applicant fails to meet the requirements for certification, he may petition the cabinet for a one (1) time only "temporary hardship certification." The cabinet will then conduct an informal hearing at which evidence shall be presented by the applicant to support his hardship request. Each temporary hardship certification request shall be considered on a case-by-case basis under the following guidelines:

(a) Failure of the applicant to receive certification would leave a significant area of the state without adequate waste disposal service.

(b) The applicant has shown a good faith effort by attending all required training sessions and met all requirements except the applicant has failed in three (3) attempts to pass the examination.

(c) The applicant has shown, through cabinet inspections, a capability for satisfactory operation of the solid waste site or facility.

Section 7. Training Course Requirements. (1) All applicants for certification shall be required to attend a training course provided by the cabinet in accordance with KRS 224.844.

(2) The training course provided by the cabinet shall be designed to provide information as appropriate to the category of certified operator. At a minimum, the training course shall provide information which enables the certified operator to perform his duties in a knowledgeable and competent manner.

(3) Landfill managers shall be trained on:

(a) The requirements for permit application for the applicable category of sanitary landfill including ownership, zoning, chapter 109 district boards, geologic and hydrologic information and specific design details;

(b) Characteristics of the waste stream; the physical, chemical and biological reactions including the hydrogeologic interactions of a landfill; and measures that shall be employed to meet the environmental performance standards in 401 KAR 47:030 and all other regulatory requirements; and

(c) Specific duties expected to be performed by individuals who are wholly responsible for the requirements associated with the operation of the applicable category of sanitary landfill permitted by the cabinet. These actions include at a minimum, the commitment of resources, oversight of operating personnel, and verification that site operation is in accordance with all provisions of the permit including technical documents.

(4) Landfill operators shall be trained on the requirements contained in the solid waste administrative regulations as they apply to daily site operation duties. These duties include judging indicators regarding a site's ability to receive wastes; judging waste characteristics for disposal acceptability; employing site equipment to maintain waste compaction, cover, and surface water management on

a daily basis; maintaining equipment; maintaining site safety; and generally assuring compliance with the administrative regulations.

(5) Landfarming operators shall be trained on the Kentucky waste management program as it applies to landfarming; wastewater treatment processes; the nature and characteristics of sludges; the physical and chemical properties of sludges; landfarming design and management; environmental considerations; and the Kentucky waste management permit process. The permit process includes requirements for application, conditions for maintaining a permit in compliance with the application and administrative regulations, and amendments to the landfarming activity and associated permit.

(6) The cabinet shall provide the training course to applicants for certification. However, the cabinet may consider alternate training courses or certification programs provided they are equivalent to the content prescribed by the cabinet's training course. It shall be the applicant's responsibility to submit such documentation as the cabinet requires for an equivalency judgment of the alternate training course. This information shall contain at a minimum the following specifics: the course name; sponsoring agency; the date, location and the beginning and ending times of the course; a summary of the course content of sufficient detail to determine relevance and quality of the course; and a copy of the certificate received.

Section 8. Issuance of Certificates. (1) Upon passage of the examination the cabinet will issue a certificate to the applicant which will indicate the category of solid waste site or facility and the category of certified operator for which the operator is certified.

(2) Certified operators shall be recertified every five (5) years.

(3) Certificates will be issued to holders of certificates of another state if the training requirements of the issuing state are deemed comparable as specified in Section 7(6) of this administrative regulation and if the operator passes the cabinet's examination.

(4) The certificates of operators who terminate their employment at a solid waste site or facility will remain valid until expiration or revocation of the certificate.

(5) Certificates shall be carried on the person of each certified operator during working hours at the facility or prominently displayed on site.

Section 9. Compliance Dates. (1) An operator who is not an appropriately certified operator and who assumes the responsibility of a certified operator shall immediately comply with the requirements in Section 12 of this administrative regulation; and

(2) Comply with the requirements in Section 6 of this administrative regulation within fifteen (15) months of assuming the responsibility.

Section 10. Revocation of Certificate. (1) The cabinet may revoke the certificate of an operator, following a cabinet hearing, when it determines that the operator has practiced fraud or deception, or that the operator has failed to perform an operator's duties including, but not limited to, failure to comply with permit conditions.

(2) The cabinet may revoke a certificate whenever the holder fails to use reasonable care and judgment in the performance of an operator's duties. No certificate shall be valid if obtained through fraud, deceit, or the submission of inaccurate data on qualifications.

(3) Individuals who have had their certificate revoked by the cabinet shall be ineligible for future recertification.

Section 11. Operator Qualifications: Education and Equivalencies. (1) All applicants shall be evaluated by the cabinet as to education, and experience as related to the appropriate category of solid waste site or facility.

(2)(a) Applicants for landfill operator shall have completed high school (by graduation or by ob-

taining an equivalency certificate) and shall have a minimum of one (1) year of experience at a landfill similar to the category of landfill for which certification is sought.

(b) If an applicant for landfill operator does not meet the requirements of paragraph (a) of this subsection, the cabinet may consider the number of years of experience in operating a landfill or experience in a related field (i.e., heavy equipment operator, road construction, surface mining, etc.) in determining eligibility for examination on a year-for-year basis.

(3)(a) Applicants for landfill manager shall have completed high school (by graduation or by obtaining an equivalency certificate) and shall have:

1. A minimum of two (2) years administrative experience in a related field (i.e., waste management, wastewater treatment, etc.); or
2. A minimum of two (2) years of postsecondary education; or
3. A minimum of two (2) years of a combination of experience in a related field and postsecondary education.

(b) If an applicant for landfill manager does not meet the requirements of paragraph (a) of this subsection, the cabinet may consider the qualifications of the applicant on a case-by-case basis.

(4)(a) Applicants for landfarming operator shall have completed high school (by graduation or by obtaining an equivalency certificate) and shall have a minimum of one (1) year of experience at a landfarming facility.

(b) If an applicant for landfarming operator does not meet the requirements of paragraph (a) of this subsection, the cabinet may consider the number of years of experience in operating a landfarming facility or experience in a related field (i.e., waste water treatment, water treatment, etc.) in determining eligibility for examination on a year for year basis.

Section 12. Interim Operators. (1) In accordance with the requirements in subsection (2) of this section, the permittee shall notify the cabinet in writing of the extended absence of a certified operator ten (10) days prior to an anticipated absence and immediately upon discovery of an extended absence due to an emergency or unanticipated circumstances. The notice from the permittee shall provide the cabinet with the following information:

- (a) Name and qualifications of the individual intended to replace the certified operator; and
- (b) The length of time for which the permittee seeks to have the interim operator fulfill the obligations of the certified operator.

(2) The permittee shall notify the cabinet of the extended absence when the operator or manager shall be absent for:

- (a) More than ten (10) consecutive operating days for a landfill operator;
  - (b) More than thirty (30) consecutive operating days for a landfill manager; and
  - (c) More than five (5) consecutive operating days for a landfarming operator.
- (3) Consecutive operating days as used in subsection (2) of this section shall be determined as any days:

- (a) When the solid waste site or facility accepts waste, operates equipment or otherwise performs the business of solid waste management; and
- (b) Which days occur in sequence regardless of whether nonoperating days such as weekends or holidays fall in between.

(4) The cabinet shall evaluate the qualifications of the designated interim operator and shall notify the permittee of the cabinet's determination in writing within thirty (30) days of receipt of the permittee's notice. The determination shall:

- (a) Approve or deny the permittee's request for designation of the interim operator;
- (b) Identify the length of time the interim operator may operate the solid waste site or facility; and
- (c) Specify conditions as appropriate to the site and the interim operator's qualifications.

Section 13. Permit Condition. As specified in Section 2 of this administrative regulation, every solid waste site or facility requiring a permit shall be operated by the operator certified pursuant to this administrative regulation. Pursuant to Sections 2 and 3 of this administrative regulation, maintaining the certified operator(s) shall be considered a permit condition, and the permit may be revoked, or penalties for permit violations sought as appropriate, upon violation of the requirements and duties established by this administrative regulation.

Section 14. Fees. (1) Fees for application for certification shall be:

- (a) \$125 for application for certification as a landfill operator;
  - (b) \$125 for application for certification as a landfill manager;
  - (c) \$150 for application for certification as both a landfill operator and a landfill manager when the application is made for certification for both categories at the same training session;
  - (d) \$125 for application for certification as a landfarming operator; and
  - (e) Fifty (50) dollars for certification by reciprocity for all categories of operator.
- (2) Fees shall accompany applications and will not be returned to those who do not qualify for a certificate. (8 Ky.R. 181; 459; eff. 2-1-1982; Recodified from 401 KAR 2:111, 3-1-1983; 10 Ky.R. 172; eff. 12-2-1983; 13 Ky.R. 913; 1228; eff. 1-13-1987; 16 Ky.R. 1642; 2174; eff. 5-8-1990; Crt eff. 10-9-2018.)